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Supreme Court of the United States

OCTOBER TERM, ~~1940~~ 1939

NO. [redacted] 73

H. J. HEINZ COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

H. J. Heinz Company prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, rendered on April 3, 1940, denying the petition of the petitioner, H. J. Heinz Company, to set aside an order of the National Labor Relations Board against the petitioner.

OPINIONS BELOW.

The findings of fact, conclusions of law and Order of the National Labor Relations Board (R. 217 to 250) are reported in 10 N. L. R. B. 963. The opinion of the Circuit Court of Appeals denying the petition of the petitioner to set aside said order is reported in .... F. (2d) .....

JURISDICTION.

The judgment or decree of the Circuit Court of Appeals was entered April 3, 1940. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10(e) of the National Labor Relations Act.

STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp. II, Title 29, Sections 151 *et seq.*) are printed in the appendix to this petition.

QUESTIONS PRESENTED.

1. Whether, under the provisions of the National Labor Relations Act, an employer which recognized the successful labor organization in an election conducted by the National Labor Relations Board, bargained collectively with it as the exclusive representative of employees for collective bargaining purposes, and reached an agreement with it concerning wages, hours, vacations, and other conditions of employment, which agreement was reduced to writing in the form of an official bulletin and posted on the employer's bulletin boards, with the consent of the Union, and is still in effect, committed a violation of Section 8(5) of the National Labor Relations Act by refusing to accede to the Union's demand that the agreement be embodied in a specific form of agreement bearing the signatures of the employer and the Union?

2. Whether, under the provisions of the National Labor Relations Act, the National Labor Relations

Board has the authority to require an employer to embody the terms of any agreement reached with a labor organization covering terms and conditions of employment in a written, signed contract with such labor organization, if requested by it to do so?

3. Whether an employer may be found guilty of an unfair labor practice on the basis of isolated acts and remarks of a few minor supervisory employees, where there is no evidence that the employer authorized or knew of such acts and remarks at the time they occurred and there is undisputed proof that as soon as such acts and remarks were brought to the employer's attention, it promptly repudiated them and forbade any repetition thereof by its supervisory employees, which instructions were strictly followed?

4. Whether the National Labor Relations Board abused its discretion in ordering the disestablishment of, and the withdrawal of recognition from the labor organization which lost the election described above, where, after said election, which was held over five months prior to the issuance of the complaint, the employer had no dealings whatsoever with said organization?

STATEMENT.

Pursuant to Section 10(b) of the National Labor Relations Act, the National Labor Relations Board (which is referred to in this petition as the "Board"), on October 26, 1937, issued a complaint against the petitioner (R. 7-10), alleging violations of the National Labor Relations Act, based upon a charge (R. 4, 5) filed with the Board, on May 27, 1937, by Canning & Pickle Workers, Local Union No. 325, affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, American Federation of Labor (referred to in this petition as the "Union"), and an amended charge (R. 6) filed with the Board on October 4, 1937 by the Union. The petitioner filed an answer (R. 13-19) to the complaint on November 6, 1937, and a hearing was held before a Trial Examiner designated by the Board, beginning November 15, 1937 and ending November 26, 1937.

On April 9, 1938, the Board issued its Decision and Order (R. 97-123). Thereafter, petitioner filed a petition to set aside the Order of April 9, 1938, whereupon the Board on May 13, 1938, issued its order setting aside its previous order (R. 129). On July 18, 1938, the Board issued a document (R. 133-160) designated Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, to which the petitioner, within the time prescribed by the Board's Rules, filed written exceptions (R. 162-209). On January 25, 1939, the Board issued its Decision and Order (R. 217-250), containing Findings of Fact, Conclusions of Law and an Order against the petitioner.

The Board's Order against petitioner (R. 248-250) directed petitioner to cease and desist from alleged conduct in violation of Sections 7, 8(1) and 8(5) of the

Act; disestablish Heinz Employees' Association, an independent labor organization composed of employees of the petitioner, (referred to herein as the "Association"); bargain collectively, at the request of, and with the Union; embody any understanding reached with the Union in a written, signed agreement if requested to do so by said Union; post notices in its plant that it will "cease and desist", "disestablish", and "bargain collectively" as aforesaid; and notify a representative of the Board of steps taken to comply with the Order. The Circuit Court of Appeals denied the petition of the petitioner to set this Order aside and granted enforcement to the Board.

The first two and main questions presented herein concern that part of the Order of the Board which requires petitioner to bargain collectively with the Union and *to embody any understanding reached with the Union in a written, signed agreement if requested to do so by the Union.*

The Union and the Association, after organizing activities commencing early in the year 1937, each claimed to represent a majority of the petitioner's employees.

As a result of negotiations, an agreement was reached providing, *inter alia,* that an election be held under the direction of the Board and that the petitioner would bargain with the successful organization.

The consent election, held on June 8, 1937, as provided for in Board's Exhibit No. 16, was won by the Union with a vote of 1079 out of 1930 votes cast (R. 583), and petitioner held the first of many collective bargaining meetings with representatives of the Union on June 17, 1937 (R. 584, 1053).

At this meeting, the Union presented a draft of a contract which embodied their demands (Board Exhibit No. 18, R. 55-60), and stated that they had authority to negotiate that contract, but if any departures were made therefrom, they would have to obtain the Union's approval (R. 1054).

Numerous meetings were held thereafter, at which wages were the principal topic of discussion. The Union demanded an increase in wages of twenty per cent. (R. 1053-1057) but the petitioner's officers informed the Union that a ten per cent. increase was the absolute limit to which the petitioner would go (R. 1115; 1057, 1121).

Upon several occasions during the course of negotiations prior to July 1, 1937, the matter of the form of the agreement had been discussed (R. 1058; 1121; 654, 655), and Kracik, the International Representative of the Union, indicated his willingness to enter into a "packing-house agreement," similar to that which the parent union had with packing-houses in the neighborhood of the petitioner's plant, and which took the form of a statement or bulletin to employees posted in the plant by the employer (R. 655; 1056; 1058; 1121). Kracik reiterated that position on at least one subsequent occasion (R. 654-656; 1059; 1121).

On July 1, 1937, the Union representatives agreed to submit to a vote of the Union membership the question whether a ten per cent. wage increase was acceptable (R. 1058), and that evening the Union voted to accept the ten per cent. wage increase, but not for a definite period, and, according to one of the Union negotiators, indicated that it would refuse to sign a contract with the petitioner (Respondent's Exhibit No. 2; R. 650, 651).

The next day the Union representatives reported the acceptance of the wage increase, and further negotiations that day led to agreement on other wage details, hours of employment and a vacation plan, all of which matters were made effective as of July 1, 1937, (R. 1059) by agreement.

Between July 2 and July 14, negotiations continued, principally between Wilner and Ebbert, attorneys for the Union and the petitioner, respectively, for the purpose of reducing the matters agreed upon to writing (R. 1060). Finally, a draft of a bulletin to be posted was agreed upon (R. 605), and the bulletin (Board Exhibit No. 22) was posted in petitioner's plant (R. 1063) by agreement of the petitioner and the Union (R. 605). At the hearing Wilner admitted that the agreement, as evidenced by the posted bulletin, was binding upon the petitioner and that the form of the agreement was important, from the Union's standpoint, only for *psychological* reasons (R. 619, 620).

The facts with reference to the third and fourth questions presented herein, viz., petitioner's alleged interference with organization activities, may be briefly stated as follows: Prior to the spring of 1937, there had never been any general labor organization in the petitioner's Pittsburgh factory (Decision and Order of the Board, R. 221). The petitioner had enjoyed a history of peaceful relations with its employees dating back to its founding in 1869 (Board Exhibit No. 14, R. 48-50).[1] There had therefore been no occasion for a schooling of the supervisory force in the role it should play in the event of an organization drive among the

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[1] This document is printed in the Record under the heading "Board Exhibit No. 15". But see pages 489 and 490 of the Record.

employees. The petitioner's supervisory force numbers about 116 persons (R. 738, 739). There is also a substantial number of persons who perform supervisory duties of a minor nature in addition to their other tasks of a non-supervisory nature (R. 763, 764). The petitioner employs approximately 2000 production and maintenance workers in its Pittsburgh factory (R. 762), a plant consisting of many separate buildings covering a large area (Board Exhibit No. 4, R. 30 at R. 33, 34; Board Exhibit No. 2, R. 23 at R. 28, 29).

Upon receiving complaint from the Union that there had been interference with the rights of the employees, the responsible officials of petitioner immediately took steps to enforce the observance by the supervisory staff of an attitude of strict neutrality and non-interference (R. 1030-1032; 741), and the Union representatives and members were assured that it was the management's desire to remain neutral with respect to organization (R. 1031, 1032).

Further instructions to the same effect were given to the supervisory staff by Howard Heinz (R. 742) the peitioner's President, and by Heinrich (R. 743; Respondent's Exhibit No. 3, R. 85, 86), the petitoner's superintendent. That these instructions were complied with appears from the fact that although the complaint in this case was not filed until late October 1937, and the hearing not held until November 1937, the Board's decision contains no finding that the petitioner in any manner interfered with its employees after the early days of the organization drive months before. It is also significant that the acts complained of occurred *prior* to the election which the Union won, so that apparently they could have had but little effect on the few employees who were said to have been the object of the acts.

The Board found that a total of eleven members of the petitioner's supervisory force of 116 persons had committed acts or made statements derogatory to the Union. At most, these amounted to hardly more than expressions of preference between the two unions. There was no allegation or proof of discriminatory discharges, financial support or other influences. Furthermore, ignoring the fact that such activities were wholly unauthorized and were promptly repudiated by petitioner, upon notice, and that instructions to maintain strict neutrality have been complied with, the Board ordered petitioner to cease and desist from dominating or interfering with the formation or administration of the Association.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In holding that petitioner violated Section 8(5) of the National Labor Relations Act by not embodying the understanding reached with the Union in a signed agreement;

2. In holding that the Order of the National Labor Relations Board directing the signing of an agreement is justified by Section 10(c) of the National Labor Relations Act;

3. In holding that there was substantial evidence to support the Board's finding that petitioner violated Sections 7, 8(1) and 8(2) of the National Labor Relations Act;

4. In failing to hold that petitioner, through its responsible executives, assured officers and members of the Union that petitioner's attitude toward the organization of its employees into labor unions was one of strict neutrality;

5. In holding that petitioner was responsible for the conduct of a few minor, supervisory employees which petitioner neither authorized nor ratified but on the contrary repudiated;

6. In holding that petitioner still accords the Association recognition in violation of the National Labor Relations Act;

7. In holding that disestablishment of the Association is necessary to assure petitioner's employees that they are free to exercise the rights guaranteed to them by Section 7 of the National Labor Relations Act;

8. In holding that there was substantial evidence to support the finding of the Board that petitioner violated Section 8(5) of the National Labor Relations Act irrespective of petitioner's refusal to enter into a written, signed agreement with the Union;

9. In failing to hold that the bulletin containing the understanding reached between petitioner and the Union was binding upon petitioner and so considered to be by the Union;

10. In holding that a sense of insecurity existed among petitioner's employees, engendered by petitioner's refusal to execute a contract in the form desired by the Union, which required the Board to command petitioner to executed such a contract.

REASONS FOR GRANTING WRIT.

I.

The Decision of the Circuit Court of Appeals Is in Conflict With Decisions of the Circuit Court of Appeals for the Seventh Circuit.

The decision of which review is sought holds that Section 8(5) of the National Labor Relations Act requires an employer to embody terms agreed upon with a union in a formal written contract if the union insists upon such a contract. The question was squarely presented to the Court and its holding thereon clearly appears from the following quotation from the opinion (R. 1149-1151):

> "Does § 8(5) require the employer to embody terms agreed upon with a Union in a written contract? * * *
>
> "We are in accord with the reasoning and the conclusions reached by the Second and Fourth Circuits and, therefore, approve the Board's conclusion that respondent violated § 8(5) by not embodying the understandings reached in a signed agreement."

In holding that Section 8(5) of the Act requires the signing of a contract embodying terms agreed upon between an employer and a union, the decision is in direct conflict with the decision of the Seventh Circuit Court of Appeals, in *Inland Steel Company v. National Labor Relations Board*, 109 F. (2d) 9 (decided January 9, 1940), in which case it was held that no written agreement is required by the National Labor Relations Act under any circumstances. In that case it was said (pages 24, 25):

> "We are unable to agree with the argument that the Act imposes a duty upon an employer ap-

plicable only in some cases. We should think such a construction of the Statute might well endanger its validity. When the concession is made, as it is, that the matter of a signed agreement is dependent upon a request by the employees or their representatives, and may be waived, we think it is clear that the matter becomes a subject of bargaining the same as any other request or demand. The Statute is barren of any express language requiring a signed agreement and it must be held that no such agreement is required unless we are authorized to read into the term 'collective bargaining' the condition that all agreements, not some, must be reduced to writing."

* * * * * *

"Notwithstanding that the Act does not 'compel any agreement whatever' the petitioner was found to have violated Section 8 (5) of the Act because of its refusal to enter into a signed agreement with SWOC, and was affirmatively directed to embody any agreement reached in a signed agreement. We do not think that the Act contemplates such a requirement and if we are right in this conclusion, it follows that the order of the Board in this respect is invalid."

The Court below, in its opinion, recognized the conflict between its decision and the decision of the Seventh Circuit in the *Inland* case (R. 1149), but preferred to follow decisions of the Second and Fourth Circuits, likewise in conflict with the *Inland* case, *supra,* on this point, such cases being *Art Metals Construction Company v. National Labor Relations Board,* 110 F. (2d) 148 (2 Cir., decided February 26, 1940), (by a divided Court), and *National Labor Relations Board v. Highland Park Manufacturing Company,* .... F. (2d) .... (4 Cir., decided March 11, 1940).

The decision of the Court below is likewise in conflict with another decision of the Circuit Court of Appeals for the Seventh Circuit in *Fort Wayne Corrugated Paper Company v. National Labor Relations Board,* .... F. (2d) .... (decided March 28, 1940), in which that Court re-affirmed its view as to the scope of Section 8(5) of the Act and refused to enforce the portion of the Board's Order requiring the employer to enter into a written contract with the union there involved.

The uncertainty resulting from this irreconcilable conflict should be resolved by a decision of this Court.

II.

The Decision of the Circuit Court of Appeals Is in Conflict With Decisions of the Circuit Courts of Appeal for the Second and Eighth Circuits.

The decision of the Court below holds that an employer may be found guilty of unfair labor practices because of isolated acts of a few minor supervisory employees although there was no finding that the employer had authorized, ratified or approved the acts and on the contrary there was convincing and undisputed proof that the employer promptly disavowed such of the questioned conduct as was brought to its attention and took immediate and effective steps to prevent any recurrence. The holding of the Court upon this point will appear from the following language of the opinion (R. 1146, 1147):

> "Petitioner also contends that, even, if its supervisory employees did engage in the aforesaid activities, there is no evidence that it expressly authorized or ratified those acts; on the contrary, when they were brought to its attention, it claims that all foremen were instructed to remain neutral

> and not discriminate against any employee because of union activities. * * * There was abundant evidence that the ordinary employees feared the disfavor of those from whom they were accustomed to taking orders. Since they were justified in believing that these supervisory employees were acting as petitioner's representatives, petitioner is responsible for what they did. (Citing cases)
>
> "We are of the opinion that petitioner violated §§ 7, 8(1) and 8(2) of the Act, *though there may have been neither express authorization nor ratification.*" (Emphasis ours)

This language indicates a complete disregard for established principles of agency. In the first place, it attaches a quasi-criminal responsibility on the principal for acts of an agent of limited powers, without any proof that the acts were either authorized or approved. In the second place, it presumes to rest responsibility for a violation of the law upon the basis of *apparent* authority, although the doctrine of apparent authority is based entirely upon principles of estoppel and assumes that there is no actual or implied authority. In the third place, it overlooks the fact that a definite repudiation of an agent's unauthorized acts is always sufficient to exonerate the principal of responsibility. In addition, from a factual standpoint the Court's holding ignores the undisputed fact that the alleged "intimidating" activities occurred prior to the election which the Union won and therefore must have had little effect. It is indeed a novel doctrine that a person may violate the law merely because others think or believe that the acts of his agent have been sanctioned by him, where there is proof that no such sanction existed.

In so holding, the decision, as to the actions of the more minor supervisory employees for whose conduct

the petitioner has been penalized, is clearly in conflict with the decisions of the Circuit Court of Appeals for the Second Circuit in *Ballston-Stillwater Knitting Co., Inc. v. National Labor Relations Board,* 98 F. (2d) 758, and of the Circuit Court of Appeals for the Eighth Circuit in *Cupples Company, Manufacturers v. National Labor Relations Board,* 106 F. (2d) 100.

In the *Ballston-Stillwater* case, *supra,* the Board had charged the employer, as here, with responsibility for actions of certain minor supervisors. The Second Circuit refused to so hold, saying (at pages 761, 762):

> "The Board found that Pitney, Baker and Jones transmitted orders from the superintendent and reported back to him concerning the work and behavior of employees, but it made no finding as to their authority to hire or discharge. Nevertheless, it imputed their conduct to the petitioner. *We do not think it follows from the characterization of these employees as 'supervisory' that liability for their acts should be visited upon petitioner.*" (Emphasis ours)

Similarly in the *Cupples* case, *supra,* the Board had castigated that employer for actions of an employee considered by other workers to be a supervisor, a holding repeated by the Board in the instant case and sustained by the Court below. The Eighth Circuit, however, held otherwise and said, page 115:

> "What her fellow-employees of the match department may have assumed her authority to be, and what she may have represented it to be we regard as unimportant in so far as the company is concerned, *since there is no proof that her acts which are complained of were done at its direction or with its knowledge or consent.* It would be strange if the efforts of the employees of the petitioner to organ-

ize and to select representatives for collective bargaining could be utterly frustrated and destroyed through attributing the acts of one of their number —wh , so far as the record shows, was eligible to membership in both the Association and the Matchworker's Union—to the employer, without any showing that the employer had ever authorized, consented to, or was aware of such acts." (Emphasis ours)

The question of an employer's liability under the Act for alleged violations by his employees is primarily a question of the law of agency. The Circuit Court of Appeals for the Eighth Circuit, in contrast with the action of the Court below, applied principles of agency to the decision of the question before it and said (at pages 114, 115 of 106 F. (2d)):

"It is elementary that a principal is only bound by the acts of an agent which are within the scope of the actual, implied or apparent authority of that agent. Miss Weitzel had no actual authority from the Company to encourage or discourage memberships in labor organizations. There is no evidence which would support a finding that she had implied authority to do so. Implied authority is nothing more than actual authority circumstantially proved. Koivisto v. Bankers' & Merchants' Fire Ins. Co., 148 Minn. 255, 181 N. W. 580; 2 C. J. 435; Hall v. Union Indemnity Co., 8 Cir., 61 F. 2d 85, 92. So far as her apparent authority is concerned: 'It is only acts within the scope of the apparent authority with which the principal clothes the agent, not those within the scope of the apparent authority with which the agent wrongfully clothes himself, without the assent or knowledge of his principal, that are binding upon the latter.' Chicago, St. P., M. & O.

Ry. Co. v. Bryant, 8 Cir., 65 F. 969, 973. See, also, Hall v. Union Indemnity Co., 8 Cir., supra, 61 F. 2d at page 91".

The question of an employer's responsibility under the National Labor Relations Act for unauthorized acts of employes is a vital one, and uncertainty resulting from the aforementioned conflict in the decisions thereon should be resolved by a decision of this Court.

III.

The Circuit Court of Appeals Has Decided Federal Questions in a Way Probably in Conflict With Applicable Decisions of This Court.

In two respects the decision of the court below upon federal questions is probably in conflict with applicable decisions of this Court. Those questions are (a) Whether the scope of the duty of an employer to bargain collectively, imposed by Section 8(5) of the National Labor Relations Act, includes the duty to embody an agreement reached as a result of such bargaining in a written, signed contract; and (b) Whether an employer subject to the National Labor Relations Act can be held to have violated Sections 7, 8(1) and 8(2) of said Act through actions of employees which were unauthorized and never ratified by the employer.

On the first question, we respectfully submit that this Court, in sustaining the constitutionality of the National Labor Relations Act in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, did so, in part at least, upon the ground that the Act does not compel agreements between employers and employees and does not prevent employers from refusing to make collective contracts. The following language

from the opinion in that case is pertinent here (301 U. S. 1, at 45):

> "The act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' The act expressly provides in section 9(a) that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. The theory of the act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the act in itself does not attempt to compel. * * *"

Although the specific question of the instant case was not then before the Court, surely the principle enunciated there is applicable to the present case. If an employer may lawfully refuse to make a collective contract with the representative of his employees, it must follow that he, in making such a contract, may refuse to evidence the contract in the particular form and manner desired by the employee representative. This is so even though it be admitted that the Act requires the reduction to writing of agreements reached through collective bargaining. *The question here is not whether such an agreement must be put in writing, but whether an employer may be compelled to accept the Union's demands as to the form in which the agreement is to be written.*

We respectfully submit that the form in which agreements might be put was no concern of Congress and cannot be any proper concern of the Board. The policy of Congress expressed by the National Labor Re-

lations Act delimits and defines the policy of the Board in enforcing the Act. The policy of Congress was and is to insure to employees all the lawful advantages of collective pressure upon their employer through collective bargaining and other collective action in order to secure for themselves the best obtainable terms and conditions of employment. Congress, and this Court in sustaining the law upon constitutional grounds, recognized the fact that the government could go no further than to attempt to equalize the bargaining power of employers and employees and to set up certain safeguards so that the attempt at equalization could not be jeopardized by specified types of conduct by employers. To say that an employer, having bargained collectively in accordance with the Act, and having agreed upon terms and conditions of employment, violates the Act *unless he agrees* to sign a contract in the form desired by the representative of his employees, is to say that the Act compels agreements between employers and employees. The Court below so held, and its decision is thus contrary to and in conflict with the decision of this Court in the *Jones & Laughlin* case, *supra*.

The second respect in which the decision of the Circuit Court of Appeals is probably in conflict with applicable decisions of this Court is its holding that the petitioner violated the Act through conduct of its employees, even though it neither authorized nor ratified the actions of its employees. In a case such as this, where the employer has a large supervisory force which carries out the policies and orders formulated and issued by the responsible executive officers, the answer to the question as to whether the employer violated the Act through conduct of employees who acted without authority from it, should depend upon whether the employee whose conduct is under consideration was one who determined the employer's policy in connection with the matters in-

volved. Such a test was sanctioned by this Court in *National Labor Relations Board v. Sands Manufacturing Company,* 306 U. S. 332. In that case, one of the questions before the Court was whether the discharge of certain persons by the employer was in violation of the Act. The Board, in holding that the discharge was discriminatory, had relied upon the statements made by the superintendent of the plant and a shipping clerk. This Court held that there was insufficient evidence to sustain the finding of the Board, saying (at page 342):

> "* * * Neither of the men who are quoted held such a position that his statements are evidence of the company's policy * * *."

The test approved by this Court is the only one practicable, especially where there are many employees who exercise supervisory, as distinguished from management, functions, unless, under the National labor Relations Act, employers are to be saddled with liability without fault.

The decision of the Court below is completely out of harmony with the law of agency in holding petitioner liable for conduct of employees in the absence of any proof that the employees were authorized to speak or act for the petitioner, and in further absence of proof of any ratification of such conduct by the petitioner. The rule applicable here was stated by this Court as early as 1827, in *The General Interest Insurance Company v. Ruggles,* 12 Wheat. 408, 6 L. Ed. 674, where it was said (12 Wheat. 412, 413):

> "* * * He is not to be considered as the general agent of the owner for all purposes whatsoever, that may have connection with the voyage. He is a special agent for navigating the vessel, and can neither bind nor prejudice his principal, by any act

not coming properly within the scope and object of such employment. *Unless the powers of agents are thus limited, no man could be safe in the transaction of any business through the agency of another. * * * It is a general rule, applicable to agencies of every description, that the agent cannot bind his principal except in matters coming within the scope of his authority; * * *"* (Emphasis ours)

The policy underlying the rule as pronounced by this Court is firmly entrenched in the law and is fully justified by principles of fair dealing. Surely, no tribunal should hold a litigant guilty of violating the law through the acts of an agent, unless he had given his agent authority to commit the violation, or, thereafter, had ratified the acts of his agent in an unequivocal manner. In the instant case, there was no proof that petitioner had authorized or ratified the acts complained of, and, on the contrary, it was definitely shown that petitioner had disavowed such conduct and had taken immediate and positive steps satisfactory to the Union, to prevent any possible recurrence thereof.

IV.

The Primary Question Presented Is of Great Public Importance and Should Be Decided by This Court.

At the time of the argument of this case before the Court below there were pending before the Circuit Courts of Appeal, in addition to the instant case, four other cases[2] each involving the question as to whether the

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[2] *Inland Steel Co. v. National Labor Relations Board* (C. C. A. 7); *Art Metals Construction Co. v. National Labor Relations Board* (C. C. A. 2); *National Labor Relations Board v. Sunshine Mining Co.* (C. C. A. 9); *Bethlehem Shipbuilding Corp., Ltd. and Bethlehem Steel Co. v. National Labor Relations Board* (C. C. A. 1).

Board has authority under the Act to require an employer to enter into a written signed contract with a labor organization. The cases cited in the margin have been decided with the exception of *Bethlehem Shipbuilding Corp., Ltd., and Bethlehem Steel Co. v. National Labor Relations Board* which is still pending in the First Circuit at the time of preparation of this petition.

We have already indicated that there have been at least two other decisions by the Circuit Courts of Appeal on the question, viz., *Fort Wayne Corrugated Paper Co. v. National Labor Relations Board, supra,* and *National Labor Relations Board v. Highland Park Manufacturing Co., supra.*

The frequency with which the question arises is well demonstrated by the fact that in the brief period from May 12, 1939 to September 6, 1939, the Board issued at least thirteen orders[3] in which respondent employers were directed to bargain collectively with labor organizations and to embody the terms of any understandings reached in written signed agreements if requested to do so by the respective labor organizations.

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[3] The orders referred to were issued in the following cases: *Matter of Chesapeake Shoe Manufacturing Co., et al.,* 12 N. L. R. B. 832; *Matter of Harry Schwartz Yarn Co., Inc., et al.,* 12 N. L. R. B. 1139; *Matter of Highland Park Manufacturing Co., et al.,* 12 N. L. R. B. 1238; *Matter of Art Metal Construction Company, et al.,* 12 N. L. R. B. 1307; *Matter of Nathan Chesler, et al.,* 13 N. L. R. B. 1; *Matter of Holston Manufacturing Company, et al.,* 13 N. L. R. B. 783; *Matter of Express Publishing Company, et al.,* 13 N. L. R. B. 1213; *Matter of Fort Wayne Corrugated Paper Company, et al.,* 14 N. L. R. B. 1; *Matter of Bussmann Manufacturing Company, et al.,* 14 N. L. R. B. 322; *Matter of Dallas Cartage Company, et al.,* 14 N. L. R. B. 411; *Matter of Stewart Die Casting Corporation, et al.,* 14 N. L. R. B. 872; *Matter of The M. H. Ritzwoller Company, et al.,* 15 N. L. R. B. 15, and *Matter of Independent Pneumatic Tool Co., et al.,* 15 N. L. R. B. 106.

The petitioner in this case had contracts with other unions which were not reduced to the form of a written contract such as the Union demanded in this case, and the evidence shows the reasons given by the petitioner for not wanting this type of contract. A considerable percentage of the union contracts existing in the country today are oral contracts or contracts represented by an exchange of letters or a posted bulletin. If the National Labor Relations Act is to be interpreted as requiring a written contract signed by both parties, in the form desired by the Union, it amounts to compulsion of an employer and will impede, rather than help the solution of collective bargaining problems.

The Congressional debates indicate that the Congress did not intend the Act to compel the signing of any labor agreement. The decision of the Second Circuit Court of Appeals in the *Art Metals Construction Company* case, *supra,* was by a divided court, and upon such a vital and fundamental question the proper construction of the Act should be uniform throughout the country. In the light of the many-sided conflicts existing in the various circuits, uniformity can be achieved only through a decision by this Court on that question.

Conclusion.

WHEREFORE it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Sixth Circuit should be granted.

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APPENDIX.

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. II., Title 29, Sec. 151, *et seq.*) are as follows:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

Sec. 10.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the

Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *